

DOCUMENT RESUME

06966 - [B2227284]

[Untimely Protest Based on Failure To Conduct Preaward Surveys].
B-192115. August 9, 1978. 3 pp.

Decision re: Teledyne Battery Products; by Milton Socolar (for Paul G. Dembling, General Counsel).

Contact: Office of the General Counsel; Procurement Law I.
Organization Concerned: Defense Logistics Agency; Interspace Battery Co.
Authority: 4 C.F.R. 20.

A protester to a contract award contended that offered prices were not based on valid vendor quotes and that the agency was obligated to conduct preaward surveys. The protest was dismissed as untimely since it was filed more than 10 days after the basis for protest was apparent. (BTU)

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DECISION



R.D. Klemm et al.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-192115

DATE: August 9, 1978

MATTER OF: Teledyne Battery Products

DIGEST:

Protest filed more than 10 days after basis of protest was or should have been known (no preaward survey concerning price realism was performed on eventual awardee after submission of best and final offers) is untimely under 4 C.F.R. § 20.2(b)(2) (1977) and not for consideration on merits.

The Defense Logistics Agency (DLA) issued request for proposals (RFP) DLA 400-77-R-2038 which solicited offers for specific quantities of six different types of aircraft lead acid storage batteries. The RFP contained an economic price adjustment (EPA) clause which provided for an adjustment in the contract price in the event the awardee experienced an increase or decrease in the cost of certain labor or material.

Negotiations were held with the offerors, and the offerors were requested to submit best and final offers no later than April 12, 1978. The best and final offers were evaluated on the basis of the offered prices without any allowable price adjustment being added. The low offer for 5 different types of batteries was submitted by Interspace Battery Company (Interspace). Based upon a preaward survey of that firm in December 1977, the contracting officer determined that Interspace was responsible and on May 9, 1978, awarded it a contract for a specified quantity of 5 different types of batteries.

Teledyne Battery Products (Teledyne) protests the award to Interspace. Teledyne contends that under the EPA clause, it had an obligation to offer prices currently being paid to vendors. The other offerors, none of whom had ever manufactured the batteries, were required by the

EPA clause to offer prices based on vendor quotes which were valid as of the date for the submission of best and final offers. To the extent the offered prices were not based on valid vendor quotes, the offered prices to DLA were indeterminable.

Teledyne alleges that DLA had an obligation under the EPA clause to conduct preaward surveys after receipt of best and final offers to insure that the offered prices were based on current vendor quotes. In instances where the offered prices were not based on current vendor quotes, DLA had a further obligation to adjust the offered prices to reflect current market costs. Based on its own investigation, Teledyne contends that some of Interspace's offered prices were not based on current vendor quotes. DLA, however, failed to conduct a preaward survey of Interspace after receipt of best and final offers. If such a preaward survey had been conducted, DLA would have found that certain Interspace prices were indeterminable and, consequently, required adjustment.

Teledyne requests that DLA set aside the award to Interspace and reprocure the batteries under a new solicitation, or, in the alternative, DLA should withdraw the award to Interspace and conduct another round of best and final offers. Teledyne also requests a conference on the merits of its protest.

The record shows that on May 11, 1978, the contracting officer informed Teledyne that he had awarded a contract to Interspace. On May 19, 1978, at the latest, the contracting officer provided Teledyne with Interspace's base prices for every specific material covered by the EPA clause and also informed Teledyne that the preaward survey of Interspace was conducted in December 1977.

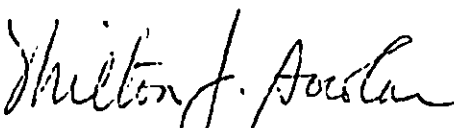
DLA contends that Teledyne's protest is untimely because it was not filed within 10 working days after the basis of protest was known. In this regard, 4 C.F.R. § 20.2(b)(2) (1977) provides in pertinent part as follows:

* * * * bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier."

Teledyne advances three arguments concerning the timeliness issue. First, the notice of award to Interspace alone did not provide a basis of protest. Second, its protest was filed with our Office on June 2, 1978 (the date of its letter of protest), which is 10 working days after it was informed of Interspace's prices and that no preaward survey of Interspace had been performed after the receipt of best and final offers. Third, it did not have the information which forms the basis of the protest until the conclusion of its investigation after the May 11 and 19 communications with DLA--May 26, 1978; its protest was filed with our Office within 10 working days thereafter.

In our opinion, Teledyne knew or should have known the basis of its protest (no preaward survey of Interspace concerning price realism was performed after receipt of best and final offers and prior to award) on May 19, 1978. However, Teledyne's protest letter, which was dated June 2, 1978, was not filed with our Office until June 8, 1978, or more than 10 working days later. The term "filed" means the receipt of the protest in the General Accounting Office. 4 C.F.R. § 20.2(b)(3) (1977). Consequently, Teledyne's protest is untimely under 4 C.F.R. § 20.2(b)(2) (1977) and not for consideration on the merits. We believe that the investigation performed by Teledyne uncovered no additional information relevant to the protest based on the failure of the agency to conduct a timely preaward survey.

Based on the foregoing, Teledyne's protest is dismissed and the request for a conference on the merits is denied.

for 
Paul G. Dembling
General Counsel